IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2006

CORAM :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE M.THANIKACHALAM

Criminal Appeal No.658 of 2004

Arjunan .. Appellant

-vs-

State, by Inspector of Police,
Perumpalai Out Post,
Pennagaram P.S.,
Dharmapuri District.
(Cr. No.617 of 1999). .. Respondent

Appeal filed under Section 374 CR PC against the judgment of the learned Additional Sessions Judge, Dharmapuri, made in S.C.No.208 of 2001 dated 24.2.2004.

For Appellant : Mr.A.Muthuraman

For Respondent : Mr.N.R.Elango
Addl. Public Prosecutor.

* * * * *

J U D G M E N T

(Judgment of the Court was delivered by P.D.DINAKARAN, J.)

The appellant, who, in this judgment, will be referred to as 'the accused, was tried before the learned Additional Sessions Judge, Dharmapuri, in S.C.No.208 of 2001 for the offence punishable under Section 302 I.P.C. on an allegation that, due to a land dispute, at about 11.30 a.m. on 23.8.99, he caused the death of Santha by stabbing her on her neck, right shoulder, head and left wrist. The learned Sessions Judge, finding the accused guilty under Section 302 I.P.C., sentenced him to imprisonment for life and also directed him to pay a fine of Rs.1,000/- with a default sentence of three months rigorous imprisonment.

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2.1. Shorn of unnecessary details, the facts leading to the conviction of the accused are as follows:-

P.W.1 is the husband of the deceased Santha, P.W.2 is the son of the deceased and P.W.4 is the daughter of the deceased. The accused Arjunan is the younger brother of P.W.1. P.W.1's family and the accused were residing at Errapatti. P.W.1, at the relevant point of time, was working as a Head Master in a Panchayat Union Elementary School at Errapatti and the deceased was working in a Nutritious Meal Centre in the same village. There was a partition in the family of P.W.1 in the year 1974 and there existed a dispute between P.W.1, Arjunan, the accused and one Kuzhanthai, another younger brother of P.W.1, with regard to a land adjacent to the land of P.W.1. The accused was pestering P.W.1 and the deceased with regard to the same and not tolerating with the troubles given by the accused and another brother, P.W.1 shifted his family to the house of his father-in-law at Yelagiri and after that, he and his wife, the deceased, used to come from Yelagiri to Errapatti to attend their work.

2.2. On 23.8.99, P.W.1 came to the school as usual in the morning. At about 11.00 a.m., the deceased, P.W.2 son and P.W.4 daughter, came to the school where P.W.1 was working. Within few minutes, all the four proceeded to the Nutritious Meal Centre, where the deceased had to go to attend her work. At about 11.30 a.m., while they were proceeding in front of the house of one Govindammal, the accused suddenly appeared before the deceased, who was going ahead of P.W.1, 2 and 4, and stabbed her on the right side of her neck, right shoulder, head and on the left wrist with a billhook, which he was having in his hand, stating that they could not live in peace unless he finishes her off. On seeing the same, P.W.1, 2 and 4 shouted and on hearing their hue and cry, villagers gathered. Thereafter, the accused escaped from the scene taking the weapon with him. The witnesses examined the deceased and found her dead. P.W.1 proceeded to Perumpalai Outpost Police Station and as the station was found locked, he proceeded to Pennagaram Police Station and gave a complaint with regard to the incident. Ex.P.1 is the said complaint.

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2.3. P.W.9, Sub-Inspector of Police of Perumpalai Outpost police station, who was in-charge of Pennagaram Police Station, after receiving the complaint, Ex.P.1, from P.W.1, registered a case in Pennagaram (Perumpalai Outpost) Police Station Crime No.617 of 1999 against the accused under Section 302 I.P.C. and prepared the printed F.I.R., Ex.P.10. He sent the copies of the F.I.R. to the Court as well as to the higher officials.

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2.4. Chinnaraj, Inspector of Police, took up investigation in the case and P.W.9 assisted him in the case. Since the said Chinnaraj died during trial, he was not examined and P.W.9, who assisted the said Chinnaraj and knows the handwriting of the said Chinnaraj, deposed about the investigation conducted by the said Chinnaraj. The investigating officer, Chinnaraj, proceeded to the scene of occurrence, observed the place and prepared observation mahazar, Ex.P.12 and rough sketch, Ex.P.11. He conducted inquest over the body of the deceased in the presence of panchayatdars and questioned the witnesses and recorded their statements. Ex.P.13 is the inquest report. After the inquest, he sent the body of the deceased through a police constable with a requisition, Ex.P.14, requesting the medical authorities to conduct autopsy.

2.5. On receipt of the requisition and the body of the deceased, P.W.3, Dr.U.Balasubramanian, Civil Assistant Surgeon attached to Government Head Quarters Hospital, Dharmapuri, conducted autopsy on the body of the deceased Santha and found the following external injuries:-

1. An incised wound of about 15 cm. x 10 cm. x bone deep on the back of the neck with loss of muscles and tissues with fracture of neck bones.
2. An incised wound 5 cm. x 2 cm. x bone deep on the left wrist.
3. An incised wound 10 cm. x 4 cm. x bone deep on right shoulder with fracture of right shoulder bone.
4. An incised wound 5 cm. x 2 cm. x bone deep on the back of skull on the left side.

As to the cause of death, the doctor, P.W.3, was of the opinion that the deceased would appear to have died of shock and haemorrhage due to multiple injuries about 12 to 36 hours prior to autopsy.

2.6. The investigating officer, Chinnaraj, in continuation of his investigation, recovered M.Os.2 and 3, blood-stained earth and sample earth, in the presence of witnesses under Ex.P.4 mahazar. He searched the accused at Perumpalai and arrested him at about 11.30 a.m. on 24.8.99 near Perumpalai bus stop and questioned him in the presence of witnesses. The accused gave a voluntary confessional statement, which was recorded and attested by P.W.5, Village Administrative Officer and another. Ex.P.5 is the admissible portion of the statement given by the accused, pursuant to which, M.O.1, the billhook used by the accused at the time of commission of crime, on being produced by the accused from the haystack in the land of the deceased Santha, was seized under Ex.P.15 mahazar attested by witnesses. The accused was,

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later, sent to Court for remand and the investigating officer sent the material objects seized in the case for chemical analysis.

2.7. Chinnaraj examined witnesses and recorded their statements. He recovered M.O.4 saree and M.Os.5 to 7 inner garments, from the police constable who seized the same at the time of post-mortem, under Form 95 and sent them for chemical analysis. He received the chemical analyst's report, Ex.P.8 and serologist's report, Ex.P.9 and after completing investigation, laid the final report against the accused before the Court on 13.10.99 for the offence punishable under Section 302 I.P.C. The case was committed to Court of Sessions and a charge was framed against the accused. Since the accused denied the charge, he was tried in S.C.No.208 of 2001 on the file of Additional Sessions Judge, Dharmapuri, as already referred to earlier.

3. The prosecution, in order to prove the charge against the accused, examined P.Ws.1 to 9 and marked Exs.P.1 to P.15 and M.Os.1 to 7. After the completion of evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him in the evidence. He denied all the incriminating circumstances and examined D.Ws.1 and 2 on his side and marked Ex.D.1, the attendance register. D.W.1 is the present Head Master of the elementary school, where P.W.1 was working as Head Master. Through him, Ex.D.1, the attendance register was marked and from which, he deposed that P.W.1 came to the school in the morning, signed in the register and went on leave in the afternoon. D.W.2, who is working in the Meal Centre, deposed that the deceased Santha was not regular in attending to her work in the office.

4. The trial Court, accepting the evidence, both oral and documentary, convicted the appellant for the offence of murder and sentenced him as referred to earlier. Hence, the present appeal by the appellant against his conviction and sentence.

5.1. The learned counsel appearing for the appellant/accused contends that since P.Ws.1, 2 and 4 are the husband, son and daughter of the deceased respectively, their evidence cannot be accepted since they are interested witnesses.

5.2. The learned counsel further submits that there was a delay in lodging the F.I.R. before the police. He submits that for the occurrence that took place at about 11.30 a.m. on 23.8.99, the first information statement was laid only at about 3.00 p.m., as evident from the endorsement made by the police at the foot of Ex.P.1, which delay has not been properly explained by the prosecution.

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5.3. Learned counsel further contends that as it is evident from the evidence of D.W.1 and Ex.D.1, the attendance register, that P.W.1 was on leave on 23.8.99, the presence of P.W.1 at the scene is doubtful and he could not have witnessed the incident and hence, the complaint, Ex.P.1, alleged to have been given by P.W.1 should have been a concocted one and prepared after much deliberation, more so, when there was a delay in laying the complaint. Under such circumstances, learned counsel submits that the conviction of the appellant is unsustainable and hence, the appellant is entitled for acquittal.

6. On the other hand, learned Additional Public Prosecutor submits that even though P.Ws.1, 2 and 4 are related to the deceased, their evidence regarding the occurrence is cogent, convincing and trustworthy and that the delay in laying the complaint has very well been explained. He further submits that Ex.D.1, the attendance register, marked on the side of the accused, in fact, supports the prosecution case, since, if P.W.1 really went on leave that day, he would have positively accompanied the deceased and P.Ws.2 and 4 at that time and witnessed the incident. In such circumstances, learned Additional Public prosecutor, submits that the trial Court was justified in convicting and sentencing the appellant for the offence of murder and the appeal is to be dismissed.

7. We have given our careful consideration to the contentions of both sides and also perused the records.

8. The cause of death of Santha is not in dispute. The medical evidence, viz., the oral evidence of the doctor, P.W.3, who conducted autopsy, and the documentary evidence, Ex.P.5, the post-mortem certificate issued by P.W.3, and Exs.P.8 and P.9, the chemical analyst's report and serologist's report, clearly show that the deceased died on account of shock and haemorrhage due to the multiple injuries sustained. Hence, we have no hesitation to hold that the deceased Santha died due to homicidal violence.

9. The point for consideration in this appeal is whether the injuries sustained by the deceased were inflicted by the appellant/accused.

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10. First let us find out whether the prosecution has established the motive part of the occurrence. The consistent evidence of the witnesses, P.Ws.1, 2 and 4, is that there was a land dispute between P.W.1, the accused, who is his younger brother and another younger brother, Kuzhanthai. According to them, the accused was pestering P.W.1 and his wife, the deceased, with regard to the dispute and that the accused also planned to grab possession of the disputed land. Hence, not tolerating with

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the troubles given by the accused, P.W.1 shifted his family to his father-in-law's house at Yelagiri and thereafter, P.W.1 and the deceased used to come from Yelagiri to the scene village, viz., Errapatti, to attend their work. On 23.8.99, P.W.1 came to the school as usual in the morning and at about 11.00 a.m., the deceased, P.Ws.2 and 4 came to the school where P.W.1 was working and within few minutes, all the four came out of the school and proceeded to the Nutritious Meal Centre, where the deceased was working. It is the further evidence of the witnesses that when they were proceeding in front of the house of one Govindammal, the accused suddenly appeared before the deceased who was going ahead and stabbed her on the right side of neck, right shoulder, head and left wrist stating that they could not live in peace unless he finishes her off. He ran away from the scene with the weapon, after the villagers gathered on hearing the hue and cry of the witnesses. From the above evidence, it is crystal clear that only on account of the land dispute between P.W.1's family and the accused, the accused stabbed the deceased. Their evidence that the accused, before mounting the attack on the deceased, stated that they could not live in peace unless he finishes her off substantiates the motive behind the occurrence as spoken to by the prosecution witnesses. Thus, we are of the considered view that the accused had a motive to attack the deceased and the prosecution has succeeded in establishing the motive.

11.1. Now, let us analyse the contentions putforth by the learned counsel for the appellant. Firstly, the learned counsel contended that the evidence of P.Ws.1, 2 and 4 cannot be accepted, since they are related to the deceased and hence, they are interested witnesses. It is, no doubt, true that P.Ws.1, 2 and 4 are closely related to the deceased, in that, P.W.1 is the husband, P.W.2 is the son and P.W.4 is the daughter. But that, by itself, cannot be a reason for this Court to reject their evidence, since they being the husband, son and daughter of the deceased, would only be interested in seeing that the real assailant is brought to book and would not spare another person falsely. On going through the evidence of P.Ws.1, 2 and 4, we find that the defence had not elicited any answer in favour of the accused in the cross-examination. The answers elicited in the cross-examination of P.Ws.1, 2 and 4 do not affect the truthfulness of the witnesses and we find it difficult to reject their evidence.

11.2. Further, the evidence of P.Ws.1, 2 and 4 with regard to the overt acts attributed to the accused also corroborates with the injuries found by the doctor, P.W.3, at the time of the post-mortem, who also opined that the deceased died on account of shock and haemorrhage due to the multiple injuries sustained. Hence, we are unable to accept the first contention of the

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learned counsel that since the witnesses are related, their evidence cannot be accepted.

12. The next contention of the learned counsel for the appellant is that there was a delay in laying the complaint, which has not been properly explained. P.W.1, in cross-examination, stated that at about 1.00 p.m., he proceeded to the police station in a two-wheeler along with one Govindan and as Perumpalai Outpost police station was not working on that day, he proceeded to Pennagaram police station and gave the complaint. It is to be noted that the distance between the scene of occurrence and Pennagaram police station is 15 kms. as seen from Ex.P.10, the printed F.I.R. One could easily imagine the state of mind of P.W.1 after the murder of his wife and on seeing the murder, P.W.1, would have been certainly shocked and distressed to take immediate steps for going to the police station and it must have some time for him to come out of the shock to think of even taking further steps. From the evidence of P.W.1, it could be culled out that out of shock, he could not proceed immediately and after regaining himself, he proceeded to the police station at about 1.00 p.m. and as Perumpalai Outpost police station was not working on that day, he went to Pennagaram police station, which is 15 kms. from the scene of occurrence and gave the complaint, which was registered as a crime at 3.00 p.m. Hence, in our considered opinion, the delay between 11.30 a.m. and 3.00 p.m. in laying the complaint has very well been explained. After registration of the complaint, the F.I.R. also reached the hands of the Magistrate at about 4.15 p.m. Hence, the contention of the learned counsel with regard to the delay in laying the complaint, in our view, does not merit any acceptance.

13. The last contention of the learned counsel for the appellant is that P.W.1 was on leave on the date of occurrence, viz., 23.8.99 and hence, his presence at the scene of occurrence is highly doubtful and he could not have witnessed the incident. As rightly pointed out by the learned Additional Public prosecutor and as seen from Ex.D.1, the attendance register marked at the instance of the accused, we find that P.W.1 went to the school in the morning, signed in the attendance register and after the arrival of his wife, son and daughter, he obtained casual leave and went along with them. Thus, it is clear that P.W.1 was present at the time of occurrence along with the deceased and witnessed the occurrence. Hence, we reject the said contention also.

14. That apart, there is yet another circumstance against the accused, viz., the recovery of M.O.1, the billhook used by him at the time of commission of crime and M.Os.4 to 7, the apparels of the deceased, recovered by the investigating officer, after the same were produced by the police constable, who was

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present at the time of post-mortem. All the above material objects, viz., M.Os.1 and 4 to 7 were sent for chemical analysis and the investigating officer obtained Exs.P.8 and P.9, the chemical analyst's report and the serologist's report respectively, which would go to show that they were found to contain human blood of 'A' group tallying with the blood group of the deceased.

15. Therefore, on the totality of evidence, which is overwhelming in nature, we find that the learned trial Judge was justified in convicting and sentencing the appellant/accused for the offence of murder. The appeal deserves to be dismissed and it is, accordingly, dismissed.

sra

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1.The Additional Sessions Judge,
Dharmapuri.

2.-do-Thro' The Principal
Sessions Judge, Dharmapuri.

3.The District Collector,
Dharmapuri.

4.The Director General
of Police, Chennai.

5.The Superintendent,
Central Prison, Vellore.

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6.The Inspector of Police,
Perumpalai Out Post, Pennagaram
Police Station, Dharmapuri.

7.The Public Prosecutor,
High Court, Madras.

+ ONE CC to Mr. A. Muthuraman, Advocate sr no. 48727

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NM(24.11.2006)

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